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BEFORE THE

**Federal Communications Commission**

JAN 31 1995

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In The Matter of )

Price Cap Performance Review )  
For Local Exchange Carriers )

CC Docket No. 94-1

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To: The Common Carrier Bureau

COMMENTS IN OPPOSITION  
OF THE  
AMERICAN PETROLEUM INSTITUTE  
TO THE  
USTA EX PARTE SUBMISSION

The American Petroleum Institute ("API"),<sup>1/</sup> by its attorneys, hereby submits these Comments in Opposition to the moving average productivity offset proposal set out in the ex parte submission of the United States Telephone Association ("USTA") which was submitted on January 18, 1995.<sup>2/</sup>

The Commission is urged to reject USTA's proposal on both procedural and substantive grounds. The moving average proposal has been filed far too late in this critical docket. The record in this proceeding is comprehensive and

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<sup>1/</sup> API filed Reply Comments on June 29, 1994, and is a participant in Customers for Access Rate Equality ("CARE") coalition.

<sup>2/</sup> Public Notice, DA 95-102 (released January 24, 1995).

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voluminous. Parties have had ample opportunity to present their views and positions in written Comments and Reply Comments. While the level of ex parte presentations has been significant, most parties have largely limited their ex parte positions and discussions to the core positions and rebuttal arguments set out in their initial submissions. By and large, the critical decision points and alternatives have been identified and framed. The 11th hour USTA proposal constitutes a new paradigm which, in terms of procedural fairness, is offered far too late in this proceeding.

On a substantive basis, the Commission must recognize that the USTA proposal is an attempt to circumvent the preponderance of the evidence which supports setting the annual productivity offset between 5.5% and 5.9%. The moving average burdens LEC interstate productivity with corporatewide LEC performance. Nonregulated ventures and intrastate services are beyond the scope of this proceeding. As in the initial price cap proceeding, the productivity offset and related price cap issues should be keyed to LEC interstate services.

Rather than being distracted by USTA's latest proposal, the Commission is urged to focus on the fundamental

considerations and points presented in this proceeding which CARE and its member organizations have stressed all along:

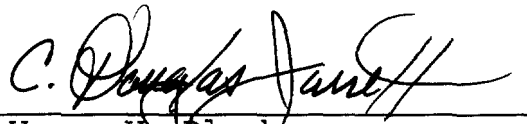
- A productivity offset of 5.5% - 5.9% is supported by the preponderance of the evidence.
- The failure to increase the productivity offset to this level will undermine the core "competitive result" objective of price cap regulation and, consequently, LECs will be in a position to retain excessive earnings with little incentive to innovate or reduce costs.
- The failure to increase the productivity offset will subject access customers to rates which --in the aggregate -- will be at least several billion dollars too high over the next several years.

In view of the foregoing, the American Petroleum Institute urges the Commission to reject the USTA

proposal and take other action consistent with views  
expressed herein.

Respectfully submitted,

**THE AMERICAN PETROLEUM INSTITUTE**

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Dated: January 31, 1995

**CERTIFICATE OF SERVICE**

I, Cassandra L. Hall, a secretary in the law firm of Keller and Heckman, hereby certify that a copy of the foregoing was served by hand-delivery on this 31st day of January, 1995, to the following:

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Cassandra L. Hall